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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/822,189	04/02/2001	Akio Saito	35.C15267	7310

5514 7590 11/13/2006

FITZPATRICK CELLA HARPER & SCINTO
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER	
TRAN, TRANG U	

ART UNIT	PAPER NUMBER
2622	

DATE MAILED: 11/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 09/822,189	**Applicant(s)** SAITO, AKIO	
	Examiner Trang U. Tran	**Art Unit** 2622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 5 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: 25-33 and 35.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Trang U. Tran
Primary Examiner
Art Unit: 2622

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed Oct. 13, 2006 have been fully considered but they are not persuasive.

In re pages 8-10, applicant argues that the Office's conclusion of obviousness is based on impermissible hindsight in using Applicant's own disclosure to provide the suggestion of modify the references to produce the claimed invention because LaJoie et al patent teaches that "a program information banner...is preferably displayed for a fixed period of fixed period of time (e.g. 2 seconds) or until an information key ... is depressed..." (column 15, lines 19-27) (emphasis added) and Kayashima et al patent does not even display a program information banner, let alone a way for the user to set the program-information-banner-display duration, or a screen for setting the time period for displaying such a banner.

In response, the examiner respectfully disagrees. It is recognized by applicant, Kayashima et al cited only to suggest the television setting menu screen for setting the timer. The timer setting of Kayashima et al has similar application whether the setting is the timing or the information banner or the program-information-banner-display duration. A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). The artisan is presumed to know something about the art apart from what references literally disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The examiner

believes that the artisan would have recognized the obviousness of setting the timer as taught by Kayashima.

In re page 10, applicant argues that neither the patent to LaJoie et al nor the patent to Kayashima et al discloses or suggests the step of displaying a setting screen for setting the duration of program information display as recited by claim 25 because the LaJoie et al patent teaches the display of a program information banner for a fixed time (e.g. 2 seconds) or until an information key is depressed while the Kayashima et al patent does not even teach the display of program information.

In response, the examiner respectfully disagrees. Applicant cannot show non-obviousness by attacking the references individually where, as here, the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). As discussed above, the timer setting of Kayashima et al has similar application whether the setting is the timing or the information banner or the program-information-banner-display duration. A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). The artisan is presumed to know something about the art apart from what references literally disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The examiner believes that the artisan would have recognized the obviousness of setting the timer as taught by Kayashima.

In re pages 11-12, applicant argues that the Office Action cannot rely on the explicit or implicit disclosure of the applied art to support its motivation-to-combine argument because the Office Action does not rely on the LaJoie et al patent or the

patent to Kayashima et al to suggest the step of displaying a setting screen for setting the duration of program information display as recited by claim 25.

In response, the examiner respectfully disagrees. As discussed above, applicant cannot show non-obviousness by attacking the references individually where, as here, the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The timer setting of Kayashima et al has similar application whether the setting is the timing or the information banner or the program-information-banner-display duration. A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). The artisan is presumed to know something about the art apart from what references literally disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The examiner believes that the artisan would have recognized the obviousness of setting the timer as taught by Kayashima.

In re pages 12-14, applicant argues that the Office has not established a legally sufficient motivation to combine the art to produce the invention of claim 25 because adding a program-information-duration setting screen to the LaJoie et al patent complicates LaJoie et al's program guide because the LaJoie et al patent does not permit the user to set the duration of program information display, to use Kayashima et al's on-screen-programming rationale in this case to increase the ease of use presupposes that it is already known for the user to select the program information duration by some method more complicated than on-screen programming, and the Office Action fails to establish that knowledge generally available to the skilled artisan or

established scientific principles teach the use of a program-information-duration setting screen for user selection of the program information duration.

In response, the examiner respectfully disagrees. It is noted that LaJoie et al does not mention the program-information-duration setting screen. The fact that LaJoie et al does not disclose the program-information-duration setting screen does not necessarily mean that it is not obvious. As discussed above, applicant cannot show non-obviousness by attacking the references individually where, as here, the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The timer setting of Kayashima et al has similar application whether the setting is the timing or the information banner or the program-information-banner-display duration. A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). The artisan is presumed to know something about the art apart from what references literally disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The examiner believes that the artisan would have recognized the obviousness of setting the timer as taught by Kayashima and the motivation for the combination is clearly stated in the last Office Action.

In re pages 14-15, applicant argue that, since the patent to Kayashima et al and LaJoie et al do not disclose or suggest a program-information-duration setting screen for user selection of the program information duration as recited by claim 25, there can be no reasonable expectation of success that is "found in the prior art" and; therefore,

the Office has not satisfied its burden of proof under MPEP § 2142 to establish a reasonable expectation of success.

In response, the examiner respectfully disagrees. As discussed above, applicant cannot show non-obviousness by attacking the references individually where, as here, the rejection is based on a combination of references. In re Keller, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). The timer setting of Kayashima et al has similar application whether the setting is the timing or the information banner or the program-information-banner-display duration. A reference must be considered not only for what it expressly teaches, but also for what it fairly suggests. In re Burckel, 592 F.2d 1175, 201 USPQ 67 (CCPA 1979). The artisan is presumed to know something about the art apart from what references literally disclose. In re Jacoby, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The examiner believes that the artisan would have recognized the obviousness of setting the timer as taught by Kayashima.

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Trang U. Tran whose telephone number is (571) 272-7358. The examiner can normally be reached on 8:00 AM - 5:30 PM, Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David L. Ometz can be reached on (571) 272-7593. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

November 7, 2006

Trang U. Tran
Primary Examiner
Art Unit 2622